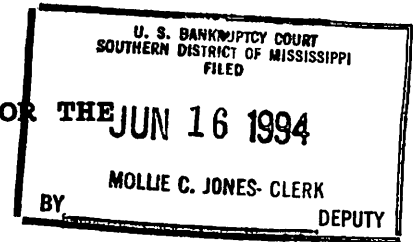


IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



IN RE:

CHAPTER 13

JOHN A. SALTER

CASE NO. 9303892JEE

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*Pro Se*

Hon. Harold J. Barkley, Jr.  
Hon. Terre M. Vardaman  
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Chapter 13 Trustee  
Attorney for Trustee

Hon. David N. Usry  
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Hon. William Holmes  
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Internal Revenue  
Service

Edward Ellington, Judge

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter came on for hearing on the *Trustee's Objection to Confirmation* filed by Harold J. Barkley, Jr. and the *Objection to Proof of Claim of Creditor, IRS* filed by the Debtor. After considering all testimony and evidence presented and the arguments of the parties, the Court finds that the *Objection to Proof of*

*Claim of Creditor, IRS* filed by the Debtor should be overruled and that the *Trustee's Objection to Confirmation* should be sustained.

**FINDINGS OF FACT**

On November 24, 1993, the Debtor filed his *pro se* petition for relief under Chapter 13 of the Bankruptcy Code. The Debtor listed the Internal Revenue Service (IRS) on his schedule of debts as having the following claims:

IRS	priority claim & taxes	\$ 3,994.74
IRS	unsecured claim	\$37,000.50

Pursuant to Federal Rule of Bankruptcy Procedure 3002(c)<sup>1</sup>, the IRS timely filed its *Proof of Claim* on January 20, 1994, with the office of the Chapter 13 Trustee, Harold J. Barkley, Jr. (Trustee).<sup>2</sup> The IRS' *Proof of Claim* was filed for \$42,018.67. This figure is comprised of unpaid federal taxes for the years 1979 through 1982, 1984 through 1989, and 1992, and for penalties and interest calculated to the date the Debtor's petition was filed.

On February 7, 1994, the Trustee filed his objection to confirmation of the Debtor's plan. The Trustee states that due to the fact that the IRS had filed a *Proof of Claim* for the priority amount of \$40,853.17, the Debtor's plan is not feasible since he

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<sup>1</sup>Hereinafter, all Rules refer to the Federal Rules of Bankruptcy Procedure unless specifically noted otherwise.

<sup>2</sup>Pursuant to Uniform Local Rule S13-4, all original Chapter 13 proofs of claim are filed with the office of the standing trustee to whom the case is assigned. The proof of claim is deemed filed as of the date of its original delivery to the trustee. The trustee will then transmit the proofs of claim to the Clerk along with a motion and an order to allow or disallow the claims.

had proposed in his plan to pay the IRS zero. In addition, the Trustee states that the Debtor's plan was not filed in good faith pursuant to 11 U.S.C. § 1325(a)(3).<sup>3</sup>

The Debtor filed his objection to the IRS' *Proof of Claim* on March 2, 1994. In the *Brief in Support of Objection to Proof of Claim* accompanying his objection, the Debtor states the numerous reasons why he objects to the claim of the IRS.

The Debtor's objection and the Trustee's objection were tried before this Court on May 5, 1994. The Court took judicial notice of the official court file at the start of the proceedings. At the trial, the Trustee and the Debtor stipulated that the Court could determine the amount of the IRS' claim, if any. Further, if it is determined that the Debtor owes the IRS the \$42,018.67, then the parties agreed that the Debtor's plan is not feasible. That is, he would not be able to fund the plan payments required to pay the IRS in full over the life of his plan. The Trustee also testified that as of the date of the trial, the Debtor was delinquent in his payments to the Trustee. Both the Debtor and the IRS argued their respective positions to the Court.

At the conclusion of the trial, the Court instructed the parties to submit proposed findings of fact and conclusions of law by June 3, 1994. The IRS submitted its proposed findings on May 27, 1994. The Debtor filed a pleading styled *Motion to Strike "Proof of Claim" Entered by IRS Under Sec. 7012(F) Due to*

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<sup>3</sup>Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

*Insufficient and Immaterial Defense* on June 2, 1994. Even though it was not styled as proposed findings of fact and conclusions of law, the Court has accepted this pleading as the Debtor's proposed findings of fact and conclusions of law.

**CONCLUSIONS OF LAW**

**I.**

This Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(B)(2)(B) and (L).

**II.**

The Court must first determine the validity and the amount of the IRS' *Proof of Claim*. Once the validity and the amount of the IRS' claim is determined, the Court must then determine if the Debtor's plan is feasible.

**III.**

Section 501 pertains to the filing of a proof of claim. Section 502 pertains to the allowance of a claim. They state in pertinent part:

**§ 501. Filing of proofs of claims or interests.**

(a) A creditor or an indenture trustee may file a proof of claim.

**§ 502. Allowance of claims or interests.**

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects.

(b) (I)f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount. . . .

In accordance with § 501, the IRS timely filed its *Proof of Claim*. Pursuant to § 502, the Debtor objected to the IRS' *Proof of Claim* and the Court held a hearing on the matter.

Rule 3001(f) states the evidentiary effect of the filing of a proof of claim. It states:

**Rule 3001. Proof of Claim.**

(f) EVIDENTIARY EFFECT. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

The Fifth Circuit Court of Appeals addressed the issue of who bears the burden of proof in regard to an objection to a proof of claim in In the Matter of Fidelity Holding Company, Ltd., 837 F.2d 696 (5th Cir. 1988). The court stated:

Under Bankruptcy Rule 301(b),<sup>4</sup> a party correctly filing a proof of claim is deemed to have established a prima facie case against the debtor's assets. The objecting party must then produce evidence rebutting the claimant or else the claimant will prevail. If, however, evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to "prove the validity of the claim by a preponderance of the evidence."

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<sup>4</sup>Rule 3001 is the former Bankruptcy Rule 301.

The ultimate burden of proof always rests upon the claimant.

In the Matter of Fidelity Holding Company, Ltd., 837 F.2d at 698. (citations omitted) (footnote added).

Applying this standard to the case at bar, the IRS submitted its *Proof of Claim* as prima facia evidence of its claim. The Debtor then had the burden of producing evidence to rebut the IRS' claim. The Debtor did not submit any proof or any evidence which proved that he did not owe the IRS the \$42,018.67. Rather, one of the Debtor's main arguments against the IRS' *Proof of Claim* was that it should be denied because it was not submitted on the Official Bankruptcy Form. The Debtor did not offer any authority to support this argument.

Rule 3001 addresses the requirements for a proof of claim:

**Rule 3001. Proof of Claim**

(a) FORM AND CONTENT. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform *substantially* to the appropriate Official Form. (emphasis added).

Upon comparison of the *Proof of Claim* filed by IRS with Official Bankruptcy Form 10, the Court finds that the IRS' *Proof of Claim* conforms *substantially* to Official Bankruptcy Form 10 as required by Rule 3001(a). Therefore, the Debtor's argument is not well taken.

Since the Debtor failed to produce any contrary evidence to rebut the IRS' prima facia evidence as to the validity of its *Proof of Claim*, the Debtor has not met his burden and the claim of the IRS is allowed. In the Matter of Fidelity Holding Company, Ltd.,

837 F.2d at 698. See also In the Matter of Placid Oil Co., 988 F.2d 554, 557 (5th Cir. 1993); In re Rankin, 141 B.R. 315, 324 (Bankr. W.D. Tex. 1992); In re Turner, 147 B.R. 989, 995 (Bankr. E. Wyo. 1992). Consequentially, pursuant to § 502(b) the Court finds that the *Proof of Claim* of the IRS is an allowed claim for \$42,018.67.

#### IV.

Having found that the IRS has an allowed claim for \$42,018.67, the Court must now address the Trustee's objection to the Debtor's plan. Section 1325((a)(6) states:

##### § 1325. Confirmation of plan.

(a) Except as provided in subsection (b), the court shall confirm a plan if--

. . . .

(6) the debtor will be able to make all payments under the plan and to comply with the plan.

As stated earlier, the Debtor stipulated at the trial that if the Court determined that he owed the \$42,018.67 to the IRS, then he would not be able to pay this amount to the IRS. Therefore, the Debtor's plan cannot be confirmed due to the fact that the Debtor cannot comply with the requirements of § 1325(a)(6).

#### CONCLUSION

Based on the evidence presented at trial by the IRS and the Debtor's failure to rebut the IRS' prima facie case, the Court finds that the Debtor's objection to the IRS' *Proof of Claim* is not

well taken and the *Proof of Claim* filed by the IRS in the amount of \$42,018.67 on January 20, 1994, is allowed pursuant to § 502(b).

Since the Debtor has stated that he will be unable to fund a plan if the IRS is allowed a claim for \$42, 018.67, the Trustee's objection to the Debtor's plan is sustained.

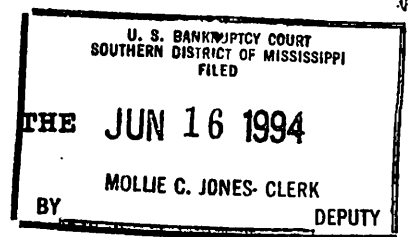
A separate judgment consistent with this opinion will be entered in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

SO ORDERED this the 16<sup>th</sup> day of June, 1994.

  
UNITED STATES BANKRUPTCY JUDGE



IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
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FINAL JUDGMENT

Consistent with the opinion dated contemporaneously herewith:

IT IS HEREBY ORDERED AND ADJUDGED that the *Objection to Proof of Claim* filed by the Debtor is overruled and the *Proof of Claim* filed by the IRS is allowed for \$42,018.67.

IT IS FURTHER ORDERED that the *Trustee's Objection to Confirmation* is hereby sustained and confirmation of the proposed plan is denied.

This is a final judgment for purposes of Federal Rules of Bankruptcy Procedure 7054 and 9021.

SO ORDERED this the 16<sup>th</sup> day of June, 1994.

  
UNITED STATES BANKRUPTCY JUDGE